

REMARKS

Claims 3 and 11 are cancelled without prejudice or disclaimer. Therefore, claims 1, 2, 4-10 and 12-20 are the claims currently pending in the Application.

Information Disclosure Statement

Applicants thank the Examiner for acknowledging review and consideration of the reference, "U Unison" Ireland on the Web, pp. 1-2, downloaded on October 20, 2000 from <http://ptv.ucd.ie/c=about>, cited on page two of the Information Disclosure Statement filed on March 28, 2001.

Rejection of Claims 1, 6, 8, 9, 14, 16, 19 and 20 under 35 U.S.C. § 102

Claims 1, 6, 8, 9, 14, 16, 19 and 20 are rejected under 35 U.S.C. § 102, as being anticipated by Black et al., U.S. Patent No. 5,774,591. This rejection is traversed.

Among the problems recognized and solved by Applicant's claimed invention is that of providing an alternative item, for example, a different television program without the user having to command a change.¹ For example, according to an aspect of Applicant's claimed invention, an alternative item is provided based on previously stored viewing preferences of the user when the system detects that the user has made a negative facial gesture when viewing a first content selection.

For at least the following reasons, Applicants' claimed invention is neither

¹ The present discussion merely illustrates aspects of Applicant's claimed invention. Applicant does not represent that every embodiment of Applicant's claimed invention necessarily embodies or performs the solutions discussed herein.

anticipated by nor obvious from the cited reference. By way of example, independent claims 1, 8, 16, 19 and 20 require selecting an alternate item based on viewing preferences of the user, if user behavior is identified that suggests that said user does not like said first item.

Black discloses a system that analyzes a sequence of images to track human head and facial features over time and to analyze facial gestures (Black, Abstract). The Examiner does not allege that Black discloses selecting an alternative item based on previously stored viewing preferences of the user. Therefore, Black does not disclose or suggest the recitations of independent claims 8, 16, 19 and 20.

Claim 6 depends from independent claim 1, and claims 9 and 14 depend from independent claim 8. Therefore, claims 6, 9 and 14 incorporate novel and non-obvious features of their respective base claims and are thus patentably distinguishable over the prior art for at least the reasons that their respective base claims are patentably distinguishable over the prior art. Accordingly, this rejection should now be withdrawn.

Rejection of Claims 2, 3, 7, 10, 11 and 15 under 35 U.S.C. § 103

Claims 2, 3, 7, 10, 11 and 15 are rejected under 35 U.S.C. § 103 as being obvious from Black in view of Hendricks et al., U.S. Patent No. 5,798,785. This rejection is traversed.

Claims 3 and 11 are cancelled without prejudice or disclaimer, therefore the rejection is moot as to these claims.

As discussed, Black does not disclose or suggest the recitations of independent claims 1 and 8. Claims 2 and 7 depend from independent claim 1, and claims 10 and 15 depend from independent claim 8. Therefore, claims 2, 7, 10 and 15 incorporate novel and non-obvious features of their respective base claims.

Hendrix does not cure the deficiencies of Black as they relate to independent Claims 1 and 8. Hendrix discloses a television program delivery system that gathers and analyzes data and can select programs suggested to a subscriber (Hendrix, Abstract). Hendrix discloses that the terminal poses questions or lists of subjective entries using menus to the subscriber and receives the subscriber's responses using a user interface with menus, usually an alphanumeric remote control, from which search entries describing the subscriber's preferences in mood, type of program, category/genre, after coming year preference and standard rating, can be entered (Hendrix, column 3, lines 5-17). The system then uses these entries, or keywords that correlate to entries, to search a database for the requisite program, and displays a suggestion for a program to the user (Hendrix, column 3, lines 13-21).

Hendrix and Black, even taken together as a whole, do not disclose or suggest selecting an alternate item based on previously stored viewing preferences of the user, if user behavior is identified that suggests that said user does not like said first item, as *inter alia* required by independent claims 1 and 8. That is, Black and Hendrix do not disclose or suggest the feature that an alternate item is selected based on previously stored viewing preferences of the user in response to certain types of user behavior suggesting that the user does not like the first item.

In fact, Black and Hendrix belong to the prior art recognized by Applicants' disclosure, because Black and Hendrix do not disclose the above-discussed problems recognized by Applicants' claimed invention, let alone disclose or suggest the solutions provided by Applicants claimed invention. For example, the problem of selecting an alternative item, for example, a different television program without the user having to actively command a change, is not disclosed or suggested. As discussed, Hendrix relies on menus from which the subscriber

may select and alphanumeric information is entered by the subscriber, for example via a remote control. Black does not disclose or suggest the use of previously stored viewer preferences in selecting an alternate item.

No Motivation for Combining

Moreover, Applicants respectfully submit that there would have been no suggestion or motivation for Applicants' claimed invention based on Black and Hendrix. The Examiner states that it would have been obvious to combine Black and Hendrix "in order to provide a system capable of recommending alternate media content selections based upon a user's dissatisfaction with the original media content." This statement of a "motivation" seems to be a paraphrase of portions of independent claims of Applicants' claimed invention. However the Examiner has provided no evidence of motivation for arriving at Applicants' claimed invention disclosed in the prior art. Applicant's disclosure own disclosure is not one of the permissible sources of suggestion or motivation for combining and modifying the references. MPEP §2143.01.

In a related vein, since the cited references do not disclose or suggest the above-mentioned problems recognized by Applicant's claimed invention, it would require resorting to impermissible hindsight reconstruction based on Applicant's own disclosure to arrive at Applicant's claimed invention based on the cited references. As discussed, the cited references do not disclose problems recognized by Applicant's disclosure and solved by Applicant's claimed invention (see foregoing discussion). Therefore, it is respectfully submitted that a person of ordinary skill in the art would not have been motivated for Applicants' claimed invention based on Hendrix's menu-driven system for receiving alphanumeric information from

the subscriber with the facial expression and facial gesture recognition system for recognizing human emotions of Black, without impermissible hindsight reconstruction based on Applicants' own claimed invention.

Accordingly, claims 2, 7, 10 and 15 are patentably distinguishable over the prior art for at least the reasons that their respective independent base claims are patentably distinguishable over the prior art. Therefore, this rejection should now be withdrawn.

Rejection of Claims 4, 5, 12, 13, 17, and 18 under 35 U.S.C. § 103


Claims 4, 5, 12, 13, 17 and 18 are rejected under 35 U.S.C. § 103 as being obvious from Black in view of Chino et al., U.S., Patent No. 6, 118,888. This rejection is traversed.

Chino does not remedy the deficiencies of Black and Hendrix as they relate to Applicants' invention as claimed in independent claims 1, 8 and 17. The Examiner does not allege that Chino discloses or suggests the above-discussed features of Applicants' invention as recited in independent claims 1, 8 and 17.

Claims 4 and 5 depend from independent claim 1, claims 12 and 13 depend from independent claim 8, and claim 18 depends from independent claim 17. Therefore, claims 4, 5, 12, 13 and 18 incorporate novel and non-obvious features of their respective independent base claims. Accordingly, claims 4, 5, 12, 13 and 18 are patentably distinguishable over the prior art for at least the reasons that their respective independent base claims are patentably distinguishable over the prior art. Therefore, this rejection should now be withdrawn.

In view of the foregoing discussion, the present Application is now believed to be allowable and the Examiner is respectfully requested to reconsider the rejection, and to allow the Application. Should the Examiner have any questions about the within remarks, or about the Application generally, the Examiner is invited to telephone the undersigned attorney at the telephone number listed below.

Respectfully submitted,


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